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In the Supreme Court of the United States

OCTOBER TERM, 1984

VOLUNTEERS OF AMERICA—MINNESOTA—BAR NONE BOYS RANCH, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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25 pp

QUESTION PRESENTED

Whether the Board is empowered by the National Labor Relations Act to assert jurisdiction over a religiously affiliated residential treatment facility for handicapped children and to require it to bargain with the union selected in a Board-conducted election as the representative of the maintenance, laundry, housekeeping, and childcare workers employed by the facility.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-8) is reported at 752 F.2d 345. The decision and order of the National Labor Relations Board (Pet. App. 9-16) are reported at 269 N.L.R.B. 1049. The decision of the Board's Regional Director (App., *infra*, 1a-6a) in the underlying representation proceeding is not reported.

JURISDICTION

The judgment of the court of appeals was entered on January 15, 1985. The petition for a writ of certiorari was filed on April 15, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

The First Amendment to the United States Constitution and relevant provisions of the National Labor Relations Act, 29 U.S.C. 151 *et seq.*, are set forth at Pet. 2.

STATEMENT

1. Petitioner Volunteers of America-Minnesota operates the Bar None Boys Ranch, a residential treatment facility for children with emotional, neurological, and developmental problems (App., *infra*, 5a n.2). The Union[1] filed a petition with the Board in July 1983 for a representation election in a unit consisting of the facility's maintenance, laundry, housekeeping and childcare workers. In response, petitioner contended that it is a religious organization; that it operates the Ranch as part of its religious mission; and that the Board's assertion of jurisdiction is impermissible under the National Labor Relations Act, 29 U.S.C. 151 *et seq.*, and the First Amendment because it poses a danger of excessive governmental entanglement with religion. App., *infra*, 5a n.2.

Following a hearing, the Board's Regional Director found that the Volunteers of America (VOA) is a national non-profit religious organization founded in 1896 and modeled after the Salvation Army. The national organization is divided into [illegible] regions, which in turn comprise state organizations called posts (App., *infra*, 5a n.2). VOA's stated purpose is "to provide an intimate knowledge of God to all the people we serve and to provide services that would uplift and reach these people" (Tr. 15).[2] As Reverend Jack Dignun, Midwest regional director of the VOA, explained (Tr. 15-16), the founder of VOA "had a philosophy * * * that you can't talk to a person when he is hungry or when he is cold. Therefore, our religion [*sic*] ministry is to provide for the material needs of the needy individual, at the same time we are providing for humanitarian services, we are also

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[1]Teamsters Local No. 683, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

[2]"Tr." references are to the transcript of the hearing conducted by the Board's Regional Office.

espousing our religious beliefs. Providing knowledge of God to the people we serve." Accordingly, the VOA operates a variety of humanitarian service programs for people in need, including the Bar None Boys Ranch, which is administered through its Minnesota Post.

The VOA resembles a traditional church in that it has a body of religious tenets (Tr. 26, 30-37; 40-42) to which its ministers are required to subscribe (Tr. 40-42) and performs sacraments of marriage, baptism, "the Lord's supper," and burial according to prescribed forms (Tr. 26, 27). It has well prescribed forms for worship and the "enrollment service is for enrolling people into our church" (Tr. 27). It is a distinctive feature of the VOA that it does not necessarily seek to enroll individuals as members of its own organization but is content to "bring [persons] back to God and return them to their own churches. If they did not have a church, then they could become members of the VOA church proper" (Tr. 64). Prior to May 1983 officers of the VOA national organization held titles analogous to military ranks (perhaps as a reflection of the original relation of the VOA to the Salvation Army); since that time officers have been referred to as "ministers." Applicants for these positions must sign a covenant pledging commitment to the national organization and its religious and other tenets. They are licensed and ordained at an annual conference of the national organization after one to three years of primarily self-study. App., *infra,* 5a n.2.

The Bar None Boys Ranch provides special education and residential treatment for emotionally disturbed children, and more intensive treatment for autistic and other developmentally retarded children (Tr. 48-49). The Ranch's chief source of income is state or local governments that place children at the facility for treatment (Tr. 57-59). The Ranch Director has overall responsibility for the services provided, and the Ranch's Program Director is responsible

for the facility's internal operations (Tr. 46-48, 60). Neither the Director nor the Program Director is a minister in the VOA, and there is no evidence that any VOA ministers work at the Ranch (App., *infra*, 5a-6a n.2; Tr. 47, 60-63). Larry Weight, the Program Director at the Ranch, testified that religion is "an integral part" of its program, that the employees are "told about the VOA church when they are applying and taken through the orientation process," that they are required to review the VOA manual, that "[t]hey are required by their job to carry out [the VOA] religious mission," and that "they are evaluated on how well they carry out the VOA religious mission" (Tr. 61-62). Neither the Union nor any of the unit employees offered testimony at the hearing.

On the basis of the evidence adduced at the hearing the Board's Regional Director concluded (App., *infra*, 6a n.2):

> [A]lthough the Employer is, or is affiliated with, a religious organization, the record discloses that the Bar None Boys Ranch provides an essentially secular charitable service in a non-sectarian manner; that eligibility to participate as a resident of the ranch is determined without regard to religious affiliation; that the employees in the unit petitioned for herein are hired without regard to religious affiliation; that the employees in the unit petitioned for herein are not required to join the national organization; [and] that the duties of these employees do not include the propagation of the national organization's substantive religious convictions.

Accordingly, the Regional Director found that the Board had jurisdiction over the Ranch and directed that an election be held on the Union's petition (App., *infra*, 1a-3a). The Board denied petitioner's request for review of the Regional Director's decision and, following an election in which the Union was selected by a majority of unit employees, the

Union was certified as exclusive bargaining representative of the unit employees (Pet. App. 11-12).

2. Petitioner refused to recognize and bargain with the Union and the Union filed an unfair labor practice charge. The Board's General Counsel issued a complaint and moved for summary judgment on the ground that all issues relevant to the unfair labor practice charge were, or could have been, litigated in the representation proceeding. The Board granted summary judgment, finding that petitioner violated Section 8(a)(5) and (1) of the Act, 29 U.S.C. 158(a)(5) and (1), and ordered petitioner to recognize and bargain with the Union as representative of the unit employees. Pet. App. 8-16.

3. The court of appeals enforced the Board's order. The court rejected petitioner's contention that the Board's assertion of jurisdiction was improper under *NLRB* v. *Catholic Bishop*, 440 U.S. 490 (1979), in which this Court had held that the Act did not authorize the Board's assertion of jurisdiction over teachers in church-operated schools.[3] The court of appeals stated (Pet. App. 5-6):

> The evidence demonstrates that the Ranch * * * differs from a parochial school. Although the VOA may view the Ranch as a vehicle for its religious missionary activities, the Ranch resembles a secular institution in critical aspects. The Ranch has as its primary purpose the care of children, not the propagation of faith. * * * [T]here are no ministers on staff at the Ranch. The lay staff is chosen without regard to religious beliefs or affiliations and does not propagate the

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[3]Because it determined that the Board's assertion of jurisdiction over teachers in church-operated schools would raise serious First Amendment questions, the Court required a "clear expression of an affirmative intention of Congress that [such] teachers * * * should be covered by the Act." 440 U.S. at 504, 507.

> tenets of the VOA. The staff does not conduct religious classes or services and does not attempt to persuade children to accept VOA sectarian doctrines.
>
> * * * * *
>
> This is in contrast to the parochial schools in *Catholic Bishop* where the religious character of the schools existed at all three levels: the church had a religious purpose in establishing the schools, the schools had a religious purpose, and the teachers were mandated to propagate sectarian doctrines.

Accordingly, the court found that the Board's exercise of jurisdiction "need not intrude on any activity substantially religious in character" and "does not pose a significant risk of entanglement" (Pet. App. 7). Unlike in *Catholic Bishop*, there was no need to find that Congress had "expressed an 'affirmative intention' to confer jurisdiction" (Pet. App. 8).

ARGUMENT

Petitioner invokes the principle of *NLRB* v. *Catholic Bishop*, 440 U.S. 490 (1979), which both states a significant limitation on the reach of the Board's jurisdiction as a matter of statutory interpretation and adumbrates the application of the protection of religious liberty contained in the Religion Clauses of the First Amendment to relationships between the Board and employers of a religious character. On this underlying principle there is no disagreement. The problem presented here is one of application of the principle to a particular set of facts. To be sure, unsympathetic interpretation and fact-finding in some cases could, if unreviewed, erode the legal principle and protection reflected in *Catholic Bishop*; however, the record in this case is so sparse and devoid of relevant specifics as to present an inappropriately abstract and hypothetical occasion for clarifying the boundaries established by *Catholic Bishop*. Accordingly, we urge the Court to deny the petition for certiorari.

1. Petitioner does not dispute that it falls within the statutory definition of employers over which the Board has jurisdiction under the Act. And further it does not dispute that it meets the Board's discretionary monetary standards for asserting jurisdiction. Section 2(2) of the Act, 29 U.S.C. 152(2), covers all employers not within eight express exceptions; there is no exception for religiously-oriented or other private nonprofit organizations. However, in the exercise of its discretion, the Board will decline to assert its legal jurisdiction over day care centers and institutions providing specialized care and custody of children unless their gross annual revenues total $250,000 or more. See *Salt & Pepper Nursery School & Kindergarten No. 2*, 222 N.L.R.B. 1295 (1976). The Ranch has annual revenues in excess of $500,000, of which approximately $100,000 comes directly from sources outside the State of Minnesota (App., *infra*, 5a n.2).

While in passing the Act, Congress intended to and did vest in the Board the fullest jurisdictional breadth constitutionally permissible under the Commerce Clause (see *NLRB* v. *Reliance Fuel Oil Corp.*, 371 U.S. 224, 226 (1963)), it was the explicit purpose of *Catholic Bishop* to "decline to construe the Act in a manner that could in turn call upon the Court to resolve difficult and sensitive questions arising out of the guarantees of the First Amendment Religion Clauses." 440 U.S. at 507. These questions are necessarily anchored in specific facts regarding the religious functions of the employer and the duties of the employees.

In *Catholic Bishop*, this Court found that the Board's assertion of jurisdiction over teachers in Roman Catholic parochial schools posed a significant risk of "entanglement with the religious mission of the school." 440 U.S. at 502. The Court relied on both " 'the admitted and obvious fact that the *raison d'etre* of parochial schools is the propagation

of a religious faith' " (*id.* at 503)[4] and the "critical and unique role of the teacher in fulfilling the mission of a church-operated school" by transmitting religious doctrine to students (*id.* at 501). Accordingly, the Court, applying its prudential policy of construing an Act of Congress to avoid a serious constitutional question, if possible, looked to see whether there was a "clear expression of an affirmative intention of Congress that teachers in church-operated schools should be covered by the Act" (*id.* at 504); and, finding no such "clear expression of Congress' intent" (*id.* at 507), it concluded that they were not covered.

The situation here appears to be distinguishable. The Board found (see pages 4-5, *supra*) that the VOA does not attempt to propagate any particular religious faith; individuals are eligible to receive the Ranch's services without regard to their religious affiliation; employees are hired by the Ranch without regard to religion and are not required to join or subscribe to VOA's tenets; and neither the Ranch's management nor its employees are involved in the propagation of any particular substantive religious doctrine. On these facts, the court below concluded that the Ranch and its maintenance, laundry, housekeeping, and childcare workers[5]—

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[4]Quoting *Lemon* v. *Kurtzman*, 403 U.S. 602, 628 (1971) (Douglas, J., concurring). The First Amendment conflict in *Catholic Bishop* arose from "the suffusion of religion into the curriculum and the mandate of the faculty to infuse the students with the religious values of a religious creed." *NLRB* v. *Bishop Ford Central Catholic High School*, 623 F.2d 818, 823 (2d Cir. 1980), cert. denied, 450 U.S. 996 (1981).

[5]Although the record does not reveal the precise job functions of unit employees known as "childcare workers," it is clear that they are not professionals, because professional employees were expressly excluded from the unit (App., *infra*, 2a, 6a n.3). Moreover, their inclusion in a unit with maintenance, laundry, and housekeeping employees supports the inference that they perform basic, essentially physical tasks in caring for children at the Ranch. See *NLRB* v. *St. Louis Christian Home*, 663 F.2d 60, 62 (8th Cir. 1981) (childcare workers at center for abused children were required to be over 21, have a high school degree, and be able to prepare meals and administer prescribed medication).

the only employees at issue here—had as their primary function "the care of children, not the propagation of faith" (Pet. App. 5-6); that the Board's assertion of jurisdiction over the Ranch "does not pose a significant risk of entanglement" (*id.* at 7), unlike that presented in *Catholic Bishop*; and hence that there was no need to make a special inquiry as to "whether Congress expressed an 'affirmative intention' to confer jurisdiction" (Pet. App. 7-8). There is no question that, under the principles usually applied in determining the Act's coverage, the Ranch and the employees here would be covered.

2. Petitioner asserts (Pet. 4-5) that for its religious organization, service to others *is* the exercise of a religious mission, and that by performing such service its employees are teaching by example the tenets of its faith. In the context of this sparse record these claims are difficult to evaluate. Certainly it does not count against petitioner's claims that members of the VOA do not seek to win additional members to their particular church organization, except where an individual—whether employee or person under their care—has no previous religious faith to return to. Although unusually ecumenical, such a posture does not preclude petitioner's mission from being characterized as entirely religious in character. The difficulty here is of a different order. It is not clear from this record whether the religious function envisaged for the unit employees entails anything more than the faithful discharge of their secular duties. This seems especially improbable with respect to the maintenance, laundry, and housekeeping workers.[6] Assuming it does not, the case would present circumstances analogous to

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[6]In *Catholic Bishop*, only teachers, whose duties included propagation of religious teaching, were held exempt from the Board's jurisdiction. Janitorial staff of religious institutions, for example, are unquestionably covered.

those recently considered by this Court in *Tony & Susan Alamo Foundation* v. *Secretary of Labor,* No. 83-1935, (Apr. 23, 1985). There, the Court rejected a claim that work in purely commercial enterprises carried out by a religious organization was constitutionally exempt from secular governmental regulation merely because the organization considered such work a form of religious service. The Court held (slip op. 8) that "objectively ascertainable facts concerning the nature and scope" of the activities—not self-definition—were controlling.

In this case the activities are located in what we have identified as the "difficult middle ground" of a church's social ministry, in which it is engaged neither in core religious functions on one hand, nor ordinary businesses on the other (Gov't Br. at 14) in *Tony & Susan Alamo Foundation* v. *Secretary of Labor, supra*; see also *Walz* v. *Tax Commission*, 397 U.S. 664, 674 (1970)). Where that social ministry is carried out in very much the same way as by a secular charitable organization and the religious origin of the mission provides no more than a motive for engaging in that work, courts have not found governmental regulation to present a special risk of intrusion on religious liberty. *NLRB* v. *St. Louis Christian Home*, 663 F.2d 60 (8th Cir., 1981); *Denver Post of the National Society of the Volunteers of America* v. *NLRB*, 732 F.2d 769 (10th Cir. 1984).[7] Similarly, even if a church's charitable activities are sufficiently suffused by a religious element as to invoke constitutional immunities for some purposes, this would not necessarily immunize all aspects of the activity from every kind of

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[7]Indeed in 1974 Congress extended the reach of the Labor Act to non-profit health care institutions with full awareness that many such institutions were church-related and that many persons thus brought under the Board's jurisdiction were working in part in fulfillment of a sense of religious obligation. See *NLRB* v. *Catholic Bishop*, 440 U.S. at 514-516 (Brennan, J., dissenting).

regulation. See *Tressler Lutheran Home for Children* v. *NLRB*, 677 F.2d 302 (3d Cir. 1982) (Board's jurisdiction upheld as to service and maintenance employees, nursing and physiotherapy assistants, clerks, orderlies, dietary, housekeeping, and laundry employees, and practical nurses at a church affiliated nursing home); *NLRB* v. *World Evangelism, Inc.*, 656 F.2d 1349 (9th Cir. 1981) (Board's jurisdiction upheld as to engineers at hotel, office, and convention center owned by a religious organization); Esbeck, *Establishment Clause Limits on Governmental Interference with Religious Organizations*, 41 Wash. & Lee L. Rev. 347 (1984).

3. Petitioner also makes more troublesome claims that the Ranch was engaged in a specifically and distinctly religious mission (Tr. 61), that the employees were expected to transmit the religious precepts of the VOA (Tr. 61), that they were trained to transmit the organization's religious values, and that they were evaluated on that basis (Tr. 62). Presumably, these claims have particular reference to the childcare workers (but see note 5, *supra*). Certainly a children's home devoted to inculcating religious principles and determined to govern its personnel selection, training, discipline, and evaluation with this end in view would present serious claims to exemption from Labor Board jurisdiction under *Catholic Bishop*, at least with respect to some employees.

In this particular case, however, the testimony supporting petitioner's claim is far too conclusory and general to permit a conscientious examination of the claim. The record does not reveal, for instance, how many of the bargaining unit members are childcare workers and how many are laundry, housekeeping, and maintenance workers. Nor does it define the specific duties of the childcare workers, the precise nature of the religious values they are supposed to promote, or the way in which they (in contrast, for instance, to laundry workers) are expected to transmit those values to

the children in their care. If they do so merely by the example of kindness and devotion to their work—*i.e.*, as "role models," as the hearing officer determined was apparently the case (App., *infra*, 6a n.2)—then the court of appeals was correct in finding no entanglement worries sufficient to bring this case under *Catholic Bishop*.

Even petitioner's contention (Pet. 6) that employees actually engage in religious activity by participating in the Ranch's chapel committee is insufficiently developed to permit proper evaluation. Although the court of appeals stated that the chapel committee "takes part in planning the spiritual and religious aspects of the program at the Ranch" (Pet. App. 3), the record does not make clear what role the childcare workers play in this aspect of the Ranch's function. The Ranch has a full-time religious director (Tr. 39), and a significant portion of the religious teaching and worship is conducted by outside churches (Tr. 53, 54-55). So far as the record reveals, this aspect of the Ranch's operation does not distinguish it from similar secular institutions that recognize the therapeutic or spiritual value of religious services and make such services available to those who request them. See *St. Elizabeth Hospital* v. *NLRB*, 715 F.2d 1193, 1196 (7th Cir. 1983); *St. Elizabeth Community Hospital* v. *NLRB*, 708 F.2d 1436, 1441 (9th Cir. 1983); *Tressler Lutheran Home for Children* v. *NLRB*, 677 F.2d at 305.

In sum, because of the sparseness of the record, there was insufficient basis for the court of appeals to decline to enforce the Board's order. Any evaluation of the issues in this case by this Court would be inappropriately abstract and hypothetical.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 1985

DOJ-1985-05

APPENDIX

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

VOLUNTEERS OF AMERICA--MINNESOTA--BAR NONE BOYS RANCH[1]

Employer

and

TEAMSTERS LOCAL NO. 638, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

Petitioner

Case No. 18-RC-13483

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purpose of the Act to assert jurisdiction herein.[2]

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:[3]

> All full-time and regular part-time maintenance, laundry, housekeeping and childcare workers employed by the Employer at its facility located at 22426 St. Francis Boulevard, Anoka, Minnesota; excluding office clerical employees, professional employees, managerial employees, confidential employees, and guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discha ged for cause since the designated payroll period, employees engaged in a strike who have been discharged for

cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by TEAMSTERS LOCAL NO. 638, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B.* v. *Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision. TWO copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Minneapolis Regional Office, 316 Federal Courts Building, 110 South 4th Street, Minneapolis, Minnesota, 55401 on or before September 8, 1983. No extension of time to file this list shall be granted except in extradordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board,

addressed to the Executive Secretary, 1717 Pennsylvania Avenue, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by September 14, 1983.

Dated September 1, 1983,

at Minneapolis, Minnesota

/s/ HERBERT S. DAWIDOFF

Acting Regional Director Region Eighteen

VOLUNTEERS OF AMERICA—MINNESOTA—BAR NONE BOYS RANCH Case No. 18-RC-13483

September 1, 1983

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[1]The name of the Employer appears as amended at the hearing.

[2]The Employer, contrary to the Petitioner, contends that the Board lacks jurisdiction herein because the Employer is a non-profit, religious organization and that assertion of jurisdiction by the Board would violate the religious clause of the First Amendment to the United States Constitution.

The Employer, Volunteers of America–Minnesota–Bar None Boys Ranch, is an unincorporated non-profit unit of the National Society of Volunteers of America (the "national organization"). The national organization is an incorporated, non-profit religious and charitable organization. Founded in 1896 by individuals previously associated with the Salvation Army, the national organization's stated principal purpose is to provide spiritual and material assistance to those in need. Underlying this purpose is the belief that individuals' material needs must be satisfied in order to serve their spiritual needs. Recipients of services provided by the national organization are encouraged to seek spirtual services from their own individual churches.

The national organization is divided into four regions and two national divisions, all of which are under the organization's national headquarters. All regional programs must be approved by the national organization, which has been granted tax-exempt status by both the Internal Revenue Service and the Minnesota Department of Taxation.

Officers of the national organization held ranks analogous to military ranks prior to May 1983; since May 1983, officers have been titled "ministers." Applicants for these positions must sign a convenant pledging commitment to the national organization's policies, as articulated in its constitution, by laws and articles of incorporation. They are then licensed and ordained at an annual conference of the national organization after one of three years of primarily self-study. Many of these licensed officers/ministers have been previously ordained by a religious denomination.

The Bar None Boys Ranch is a coeducational residential treatment facility for children and adolescents with emotional, neurological and developmental problems and difficulties. It has annual revenues in excess of $500,000, of which approximately $100,000 comes directly from sources outside the State of Minnesota. The ranch staff includes a

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Director and Program Director, neither of whom is ordained by the national organization or any denomination, and a Religious Director, whose credentials and background are undisclosed in the record.

There is no indication that the employees in the unit petitioned for herein (i.e., maintenance, laundry, housekeeping and childcare workers) are members of the national organization or that membership is required as a condition of employment at the ranch. Neither does the record reveal that the religious affiliation of any of these employees is a factor in hiring decisions, although they are advised of the national organization's religious tenets upon being hired.

The Employer asserts that the employees petitioned for herein carry out the religious principles of the national organization, but the record does not indicate in what way this is done, other than the fact that the childcare workers serve on the chapel committee. The chapel committee is designed to address the "spirtual side" of the children by coordinating such activities as services provided by area churches on the Bar None Boys Ranch grounds. The religious instruction which the petitioned-for employees are said to provide appears to be limited to serving as "role models" for the children at the ranch. The religious structure of the ranch is non-denominational to the extent that any child in the facility—Christian, Jewish, Hindu or Budhist—could receive appropriate religious services upon request. Furthermore, the ability of children to receive services at the facility is not determined or limited by their religious affiliation.

In view of the foregoing and the record as a whole, I conclude that jurisdiction should be asserted herein. Thus, although the Employer is, or is affiliated with, a religious organization, the record disclose that the Bar None Boys Ranch provides an essentially secular charitable service in a non-sectarian manner; that eligibility to participate as a resident of the ranch is determined without regard to religious affiliation; that the employees in the unit petitioned for herein are hired without regard to religious affiliation; that the employees in the unit petitioned for herein are not required to join the national organization; that the duties of these employees do not include the propagation of the national organization's substantive religious convictions; and that the Employer's operations meet the Board's monetary standards for the assertion of

jurisdiction. *Harborcreek School for Boys*, 249 NLRB 1226 (1980); *Catholic Community Services*, 247 NLRB 743 (1980). See also, *Thiel College*, 261 NLRB 580 (1982), citing *Barber-Scotia College, Inc.*, 245 NLRB 406 (1979) (applicability of *N.L.R.B.* v. *Catholic Bishops of Chicago*, 440 U.S. 490 (1979) limited to parochial school teachers).

[3]The unit appears as agreed to by the parties. The parties further agreed that part-time employees who averaged four hours a week during the calendar quarter immediately preceding the payroll period for eligibility would be considered regular part-time employees and would be included in the unit.